

STATEMENT FOR THE RECORD
OF
SENATOR LISA MURKOWSKI
SENATE JUDICIARY COMMITTEE
MARCH 28, 2012

Mr. Chairman and Ranking Member Grassley, thank you for bringing the Senate Judiciary Committee together this morning to hear the testimony of Mr. Henry Schuelke, the special counsel selected by US District Court Judge Emmet Sullivan to investigate allegations of prosecutorial misconduct in the trial of the late Senator Ted Stevens and recommend whether contempt charges should be brought against certain members of the prosecution team.

Mr. Schuelke's report, released to the public on March 15, 2012, chronicles what I believe will be recorded by history among the darkest moments in the Justice Department's 223 year history. It is important that its conclusions be reviewed and thoroughly considered by legislators, policy makers and judges.

The conclusions of Mr. Schuelke should be considered not because doing so will bring justice and closure to my colleague, the late Senator Ted Stevens. Not because it will bring closure to Senator Stevens' family or the people of the State of Alaska who sent him to Washington for a record forty years and three days. It is no longer possible to make things right for Senator Stevens, his family or those in Alaska who loved and respected him. Senator Stevens was a victim of the Justice Department's determination to obtain a conviction, notwithstanding fatal constitutional flaws, eight days before he would stand for re-election for the last time. And but for that sinister determination, I believe deep in my heart that Senator Stevens would still be among us.

It bears noting that in a debate but days before that election, Senator Stevens said, "I have not been convicted. I have a case pending against me, and probably the worst case of prosecutorial ... misconduct by the prosecutors that is known...I think you will find out, I will succeed and I'll be found innocent." How tragic that Senator Stevens did not live to learn precisely the extent of the misconduct. But his prediction, "that it is probably the worst case of prosecutorial misconduct...that is known" seems to have been proven accurate.

It is too late to do justice to Senator Stevens or the people of Alaska. But we must do justice to the Constitution. The term "government overreach" is frequently uttered in Washington and in our home states. We often understand the term to refer to differences regarding the proper role of government in the regulation of businesses and our personal lives.

The conduct of Justice Department prosecutors in the trial of Senator Stevens raises the concept of "government overreach" to new heights. For this example of "government overreach" threatened not only the good name of a fine individual but also his freedom.

The right to a fair trial is a fundamental right under our Constitutional system. As construed by the Supreme Court in the seminal cases of Brady and Giglio, this package of rights requires federal prosecutors to grant the defense access to exculpatory evidence as well as evidence known to the prosecution that tends to undermine the credibility of the prosecution's

witnesses. Mr. Schuelke's investigation proved that the Justice Department's failure to afford these rights to Senator Stevens and his defense team was both widespread and intentional.

This affront to our Constitutional system is hardly trivial. If a standing United States Senator can be treated this way, and the Justice Department can nearly get away with it, just think what happens every day to the ordinary citizen – oftentimes a small business person – who finds himself or herself trapped in the federal criminal justice system.

As the members of this committee know, I have been working with a diverse group of organizations – the American Bar Association, the American Civil Liberties Union, the US Chamber of Commerce and the Constitution Project – on a bill that simplifies the Brady obligation so that it is easily understood by the overwhelming majority of federal prosecutors who want to fully comply. That bill is S.2197. It is cosponsored by Senators Inouye, Hutchison, Begich, Akaka and Enzi. I respectfully ask that the committee schedule this bill for hearing in the very near future.

The Office of Professional Responsibility of the Justice Department is, I understand, in the process of finalizing its own prosecutorial misconduct report which may lead to disciplinary action. Several weeks ago when the Attorney General was before the Commerce, Justice, Science Appropriations Subcommittee, several of my colleagues and I asked that this report be made public along with the Justice Department's plan going forward. I would respectfully ask this Committee to support us in this effort.

And finally, I am compelled to call the Committee's attention to certain allegations against the government's lead witness in the Stevens case – Bill Allen – which the Justice Department chose not to pursue. In August 2010 I asked the Attorney General why the Justice Department declined to prosecute Mr. Allen on charges of transporting a woman across state lines for immoral purposes – a Mann Act violation. The victim, in this case, was Paula Roberds, a young woman from a Native village in Western Alaska, not the individual mentioned in the Schuelke report. Over the objections of investigators from the Anchorage Police Department and the FBI and the recommendation of career prosecutors, unknown senior officials in the Justice Department refused to allow this case to go to a Grand Jury. When the State of Alaska sought permission to prosecute the Mann Act violation itself, the Justice Department refused to let this prosecution go forward.

The pattern of Mr. Allen's behavior identified in the Schuelke report intensifies my search for an answer as to why he was not prosecuted for his activities with respect to Ms. Roberds. The Office of Professional Responsibility has accepted my request to initiate an independent inquiry into this matter. I would ask that the Committee join with me in encouraging the Office of Professional Responsibility to conduct a thorough investigation into the Justice Department's thinking here.

Let me take this opportunity to thank the Chairman and Ranking Member for scheduling this important hearing and express my appreciation for allowing my views to be printed in the record.